

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

George Kolodziej

Debtor(s)

Case No.: 15-11761

Chapter: 13

Hearing Date: 1/8/16

Judge A. Benjamin Goldgar (Lake)

NOTICE OF MOTION

TO: Glenn B Stearns, Chapter 13 Trustee, 801 Warrenville Road, Suite 650, Lisle, IL 60532 by electronic notice through ECF
George Kolodziej, Debtor(s), 407 Quigley Street, Mundelein, IL 60060
Lidia Kolodziej, Co-Debtor, 407 Quigley Street, Mundelein, IL 60060
Charles L. Magerski, Attorney for Debtor(s), 900 Jorie Boulevard, Suite 150, Oak Brook, IL 60523 by electronic notice through ECF

PLEASE TAKE NOTICE that on the 1/8/16, at 9:30AM, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge A. Benjamin Goldgar, Bankruptcy Judge, in the courtroom usually occupied by him/her at the North Branch Court (Round Lake Beach), 1792 Nicole Lane, Round Lake Beach, IL 60073 or before any other Bankruptcy Judge who may be sitting in his/her place and stead, and shall then and there present this Motion of the undersigned, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Debtor's attorney via electronic notice on December 21, 2015 and as to the debtor and co-debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on December 21, 2015.

/s/ Joel P. Fonferko
Attorney for Movant

Berton J. Maley ARDC#6209399
Rachael A. Stokas ARDC#6276349
Gloria C. Tsotsos ARDC#6274279
Jose G. Moreno ARDC#6229900
Peter C. Bastianen ARDC#6244346
Joel P. Fonferko ARDC#6276490
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
C&A FILE (14-15-05864)

NOTE: This law firm is a debt collector.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed below, as to the Trustee and Debtor's attorney via electronic notice on December 21, 2015 and as to the debtor and co-debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on December 21, 2015.

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/s/ Joel P. Fonferko
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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND CO-DEBTOR STAY OR
IN THE ALTERNATIVE TO DISMISS THE CASE FOR FAILURE TO MAKE PLAN
PAYMENTS**

NOW COMES Nations Direct Mortgage, LLC, (hereinafter "Movant"), by and through its attorneys, Codilis & Associates, P.C., and moves this Honorable Court pursuant to 11 U.S.C. §362(d) and §1301(c) for an Order granting Movant relief from the automatic stay and co-debtor stay, or alternatively, for entry of an order dismissing the case pursuant to 11 U.S.C. §1307, and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois, Eastern Division;
2. The Debtor is indebted to Movant for which the Movant claims a valid security interest in the property commonly known as 407 Quigley Street, Mundelein, IL 60060;
3. Enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtor filing of this petition on 3/31/15;
4. The Chapter 13 plan herein provides for the cure of the default of said mortgage and maintenance of current payments during the pendency of the proceeding;

5. Pursuant to the plan, Debtor(s) is/are to disburse the current monthly mortgage payments directly to Movant beginning with the first payment due after the filing of the Chapter 13 Bankruptcy (subject to periodic adjustment due to change in escrow);

6. Movant is entitled to relief from the automatic stay under 11 U.S.C. Section 362(d) for the following reasons:

- a) As of 12/15/2015, the Debtor(s) is/are past due for the 10/1/15, and all amounts coming due since that date. Any payments received after this date may not be reflected in this default;
- b) As of 12/15/2015, the total post-petition default through and including 12/1/15, is \$7,079.29. Any payments received after this date may not be reflected in this default. This amount includes post-petition attorney fees in the amount of \$826.00;
- c) On 01/01/2016, the default will continue to increase as additional amounts become due;

7. Said failure to make post-petition mortgage payments is sufficient grounds for relief from the automatic stay for cause pursuant to 11 U.S.C. Section 362(d)(1);

8. That sufficient grounds exist to dismiss this proceeding under 11 U.S.C. §1307 as:

- a) debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes an unreasonable delay that is prejudicial to moving creditor and the case should be dismissed under §1307(c)(1);
- b) debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes

“cause” and the case should be dismissed under the general provisions of 11 U.S.C. §1307;

- c) the default in post-petition mortgage payments constitutes a material default under paragraph C of the Chapter 13 plan and case should be dismissed under §1307(c)(6);

9. This Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, and Movant requests this Court so order;

10. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding:

\$650.00 for Preparation of Notice and Motion for Relief from the Automatic Stay, and prosecution of same

\$176.00 for Court filing fee

11. That the subject note and mortgage are co-signed by Lidia Kolodziej and that to the extent that the co-debtor stay of 11 U.S.C. §1301 applies to real estate loans, it applies to Lidia Kolodziej and grounds exist for relief therefrom under 11 U.S.C. §1301(c)(1) as the co-debtor received an ownership interest in the house and under 11 U.S.C. §1301(c)(3) if the automatic stay is modified therein;

WHEREFORE, Nations Direct Mortgage, LLC prays this Court enter an Order pursuant to 11 U.S.C. Section 362(d) and Section 1301(c) modifying the automatic stay and co-debtor stay as to Movant, or alternatively, for an entry of an order dismissing the case pursuant to 11 U.S.C. §1307, allowing the fees and costs described herein to be added to the indebtedness pursuant to the terms of the note and mortgage, and for such other and further relief as this Court may deem just and proper.

Dated this December 21, 2015.

Respectfully Submitted,

Codilis & Associates, P.C.

By: /s/ Joel P. Fonferko

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